

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Saavedra	Team: Squad #1	CCRB Case #: 201902555	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/13/2019 8:09 AM	Location of Incident: Southbound Clearview Expressway and 35th Avenue	Precinct: 111	18 Mo. SOL 9/13/2020	EO SOL 4/30/2021	
Date/Time CV Reported Wed, 03/13/2019 8:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/25/2019 12:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Neal Mitchell	15669	957864	HWY 03

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Helder Santos	30530	935698	HWY 03

Officer(s)	Allegation	Investigator Recommendation
A.POM Neal Mitchell	Force: Police Officer Neal Mitchell used physical force against § 87(2)(b)	
B.POM Neal Mitchell	Abuse: Police Officer Neal Mitchell threatened to arrest § 87(2)(b)	

### Case Summary

On March 13, 2019, § 87(2)(b) filed this complaint over the phone with IAB. On March 25, 2019, it was received at the CCRB.

On March 13, 2019, at approximately 8:09 am, on the southbound side of the Clearview Expressway, in the vicinity of 35<sup>th</sup> Avenue in Queens, Police Officer Helder Santos of Highway Unit 3 stopped § 87(2)(b) in her vehicle. PO Santos asked § 87(2)(b) for her driver's license, which she provided. PO Santos then returned to his vehicle and issued § 87(2)(b) a summons for § 87(2)(b).

Police Officer Neal Mitchell, also of Highway Unit 3, pushed § 87(2)(b) (**Allegation A: Force-** § 87(2)(g) and told her that she could be arrested (**Allegation B: Abuse of Authority-** § 87(2)(g)).

Dashboard camera footage was obtained for this incident, and has been included in the case file (Board Reviews 01,02, 03, and 04).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Neal Mitchell used physical force against § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Neal Mitchell threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that she was pulled over by PO Santos. It took her approximately three minutes to stop because, while PO Santos spoke over his loudspeaker, she could not understand him and did not initially know that he was talking to her. PO Santos obtained § 87(2)(b)'s license and registration and returned to his car. After waiting for 20 minutes, § 87(2)(b) exited her vehicle and approached PO Santos' car. He spoke to her over the loudspeaker, but again she could not understand him. A short time later, PO Mitchell arrived. PO Mitchell approached her, and was "very aggressive," and poked § 87(2)(b) in the right side of her chest with the outstretched fingers of one of his hands, and told her that she could be arrested. § 87(2)(b) returned to her vehicle and PO Santos issued her a summons. (Board Review 05).

PO Santos testified that he stopped § 87(2)(b) after observing her going approximately 71 miles per hour in a 50-miles-per-hour zone. PO Santos gave several commands over his loudspeaker which § 87(2)(b) did not initially obey, but she eventually pulled over to the right shoulder of the highway. PO Santos asked for § 87(2)(b)'s license and registration, which she eventually provided after being asked several times, though yelled at and insulted PO Santos. PO Santos then returned to his car to write the summons, and § 87(2)(b) exited her car and approached PO Santos, and stood next to his driver's side door on the highway. PO Mitchell arrived on-scene and approached § 87(2)(b) and placed a hand on her in order to guide her away from the road. PO Santos stated that he did not hear PO Mitchell threaten to arrest § 87(2)(b) (Board Review 07).

PO Mitchell testified that he stopped in order to assist PO Santos with a car stop. § 87(2)(b) was standing in the highway near PO Santos' driver's side window. PO Mitchell exited his vehicle and told § 87(2)(b) to move away from PO Santos' car approximately four times and she did not comply. PO Mitchell placed his hand on § 87(2)(b)'s shoulder to guide her back to her vehicle. § 87(2)(b) raised her hand above her head to deflect PO Mitchell's hand away from her. PO Mitchell denied ever threatening to arrest § 87(2)(b) (Board Review 06).

PO Santos' dashboard camera footage shows PO Santos repeatedly asking § 87(2)(b) to pull over to the right, with which she eventually complies. At 08:08:21 (Board Review 01) PO Santos asks for § 87(2)(b)'s license three times, which she refuses to provide, asking why she was pulled over. PO Santos explains that she was speeding, and she eventually provides her documents. § 87(2)(b) exits her vehicle and walks around the right-side shoulder lane of the highway, at 8:10:15 (Board Review 01). At 8:16:38 (Board Review 02), § 87(2)(b) then walks offscreen to the left. Due to the positioning of PO Santos' vehicle immediately to the right of the highway, it is evident that § 87(2)(b) walked into the active traffic lane. Over a span of approximately two minutes, beginning at 8:16:40, PO Santos asks § 87(2)(b) to return to her vehicle at least 10 times, which she fails to do. At 8:16:47 (Board Review 02), PO Mitchell grabs § 87(2)(b) from the front with both of his hands on her shoulders and pushes her away from the highway towards § 87(2)(b)'s vehicle. § 87(2)(b) immediately pulls away from him and continues to speak to him for a few seconds. The footage does not capture any audio outside the vehicle, and therefore does not capture the conversation between PO Mitchell and § 87(2)(b) (Board Reviews 01, and 02).

Officers can use their discretion to decide whether to order passengers to exit or remain in the vehicle during a lawful stop. The intrusion of requiring passengers to remain in the vehicle does not outweigh the significant safety concerns for police officers conducting a lawful stop. People v. Forbes, 283 A.D. 2d 92 (2001) (Board Review 10).

Officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. NYPD Patrol Guide, 221-01 (Board Review 11).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- PO Mitchell has been a member-of-service for four years and has been a subject in one other CCRB complaint and two allegations, both of which were unsubstantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
  - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]
  - A FOIL request was filed with the New York City Office of the Comptroller in regards to Notices of Claim for this incident. When the results of that inquiry are received they will be added to the case file (Board Review 09).
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Squad No.: 1

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date